

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	
)	
)	ORDER
IN RE:)	
)	Case No. 2008-3
Protest of Printmasters Professional)	
Printers, Inc., Appeal of Printmasters)	
Professional Printers, Inc.)	
)	
RFP # 6641)	
)	

This matter came before the South Carolina Procurement Review Panel (the Panel) by way of an appeal letter from Printmasters Professional Printers, Inc. (Printmasters), dated August 14, 2008, requesting administrative review of the Chief Procurement Officer's (CPO's) dismissal of its protest as untimely in his August 4, 2008, decision. On October 7, 2008, the CPO filed a motion to dismiss the appeal before the Panel for lack of jurisdiction. The Panel provided Printmasters with the opportunity to file a legal brief on the issue of jurisdiction. When the Panel did not receive a brief on October 31, 2008, it notified Printmasters that it would proceed with its administrative review based on the record and submissions of the CPO. The Panel now issues this order without conducting a hearing based on the threshold issue of jurisdiction as determined from the undisputed facts of the case together with established law.

Findings of Fact

In this solicitation, Clemson sought proposals for printing services with the intention of implementing a 5 year Preferred Vendor contract for a variety of print jobs. The RFP was issued on May 22, 2008, and set an opening date of June 19, 2008. The RFP also provided that the award would be posted within 15 days of the opening date at both the Clemson Procurement Service's physical location and on its website. On July 15, 2008, Clemson posted notice of the

Intent to Award at the physical location of its Procurement Service and on the procurement website. Additionally, Clemson's Procurement Director, Mike Nebesky, e-mailed all offerors on July 15, 2008 to alert them that the Intent to Award had been posted and that they could view it on the website. The Intent to Award included a notice about the right to protest under section 11-35-4210 of the Consolidated Procurement Code (the Code) and indicated such protest should be filed with the CPO at the Information Technology Management Office (ITMO) in Columbia. The Intent to Award also stated that the award would become effective at 4:30 p.m. EST on July 25, 2008.

The RFP incorporated by reference Clemson's Standard Bidding Terms and Conditions and provided the website address for accessing them. The Standard Bidding Terms and Conditions included a clause entitled "Protests," which provides that "Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code." This clause includes a citation to section 11-35-4210 of the Code. Another clause, entitled "Protest – CPO – ITMO Address," provided the address for submitting protests relating to information technology solicitations.

On the afternoon of July 28, 2008, Mr. Nebesky received a protest from Printmasters Professional Printers, Inc. On July 29, 2008, Mr. Nebesky forwarded the protest to the CPO for ITMO.

Conclusions of Law

An offeror who is aggrieved by an intended award is required to "protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of the intent to award, whichever is earlier, is posted in accordance

with this code.” S.C. Code Ann. § 11-35-4210(1)(b) (Supp. 2007). Time is computed as follows under the Code:

“Days” means calendar days. In computing any period of time prescribed by this code or the ensuing regulations . . . the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.

S.C. Code Ann. § 11-35-310(13) (Supp. 2007).

The Intent to Award in this case was posted in the locations designated by the RFP on July 15, 2008. As calculated under the Code, the time to protest ran until Friday, July 25, 2008. Thus, Printmasters’ protest needed to be filed on July 25, 2008, to be considered timely. However, as is clear from the record, Printmasters did not submit its protest until three days later, on Monday, July 28, 2008. Nothing before the Panel indicates that Printmasters should be excused from this deadline.

The Panel has repeatedly ruled that the time for filing a protest is jurisdictional and cannot be waived by the conduct or consent of the parties. *See, e.g., In re: Protest of Oakland Janitorial Services, Inc.*, Case No. 1988-13; *In re: Protest of National Cosmetology Ass’n*, Case No. 1996-17; *In re: Protest of Jones Engineering Sales, Inc.*, Case No. 2001-8. Moreover, as the Panel has observed in the past, “Persons doing business with the State under the Consolidated Procurement Code are charged with knowledge of the provisions of the Code, including the time limitations on protests.” *In re: Protest of Hospital Products, Inc.*, Case No. 1989-15, 1989 WL 1114606, at *3 (September 26, 1989). Printmasters was notified of its right to protest both in the RFP and in the Intent to Award, which was posted in the proper locations. Printmasters did not

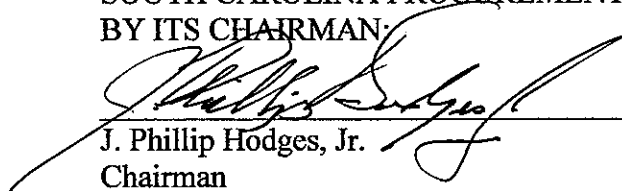
file its protest within the time frame specified by law, and there can be no other conclusion than lack of jurisdiction to consider the merits of the protest.

Conclusion

For the reasons stated above, the Panel affirms the August 4, 2008, decision of the CPO and dismisses the protest of Printmasters as untimely.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL
BY ITS CHAIRMAN:



J. Phillip Hodges, Jr.
Chairman

Columbia, South Carolina

This 21ST day of November, 2008.